



# Iowa General Assembly

## 2005 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/aspx/Archives/Committees/Interim/2005/Committee.aspx?id=77>

### SEXUAL AND OTHER CRIMINAL OFFENSES, CRIMINAL PENALTIES, AND SENTENCING PRACTICES STUDY COMMITTEE

**Meeting Dates:** [November 30, 2005](#) | [October 26, 2005](#)

**Purpose.** *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <http://www.legis.state.ia.us>, or from the agency connected with the meeting or topic described.*

### SEXUAL AND OTHER CRIMINAL OFFENSES, CRIMINAL PENALTIES, AND SENTENCING PRACTICES STUDY COMMITTEE

November 30, 2005

**Co-chairperson:** Senator Keith Kreiman

**Co-chairperson:** Senator Larry McKibben

**Co-chairperson:** Representative Lance Horbach

**Introductory Comments.** Co-chairperson McKibben stated he plans to introduce early in the 2006 Legislative Session death penalty legislation for perpetrators who murder children. He further stated the death penalty would deter perpetrators from murdering the person who is oftentimes the only witness to their crimes.

**County Attorneys Association.** Ms. Nan Horvat, Assistant Polk County Attorney, commented that the 2,000-foot residency restriction for sex offenders needs to be clarified. She stated measuring the distance from the real property of the school to the residence of the sex offender is problematic and should be clarified by either referring to the real property of the sex offender's residence or the actual residence of the sex offender. She also commented that some child care facilities have indicated they do not want the registered sex offenders in their neighborhood to know where the facility is located.

Senator Angelo asked how difficult it is to prosecute sex abuse-related crimes when the only witness is the victim. Mr. Tom Ferguson, Black Hawk County Attorney, stated that if penalties are increased for sex abuse-related crimes, some offenders will not plea bargain because they are looking at serving longer sentences, while other offenders will enter into a plea bargain and spare the victim a trial because the offender is facing longer sentences. He stated it is still too early to determine what the effects of H.F. 619 will ultimately be on the justice system.

Co-chairperson Horbach asked why local county attorneys did not oppose the adoption of ordinances restricting the residency of sex offenders. Ms. Horvat said county attorneys are answerable to the voters just as legislators are answerable to the voters.

Co-chairperson Horbach asked whether it would be beneficial to allow a local board to determine if a sex offender can reside within 2,000 feet of a school or child care facility. Ms. Horvat stated it would be more beneficial to have a statewide authority determine if a sex offender can reside within 2,000 feet of a school or child care facility because the law would be enforced uniformly throughout the state. Co-chairperson Horbach asked why would it be appropriate for a board in Des Moines determine where a sex offender lives in other towns across the state. Senator Dvorsky commented that the criminal justice system is spending enormous amounts of resources and time enforcing the 2,000-foot residency restriction when it may be more appropriate to focus resources on the offenders who are the most likely to reoffend.

Representative Olson asked whether the 2,000-foot residency restriction protects children. Ms. Horvat stated the new law has forced police officers to determine who is living in their communities and where they reside.

Co-chairperson Kreiman commented that the General Assembly should consider adopting safety zones that prohibit or restrict the movements of a sex offender within that zone.

**Mr. Mark Smith, Office of the State Public Defender.** Mr. Smith suggested that an exception to the 2,000-foot residency restriction should be created for offenders currently under supervision. He stated that the offender is already being supervised, which adds a level of protection for the community.

Co-chairperson Horbach asked whether a local board should determine if a sex offender can reside within the 2,000-foot residency restriction. If a local board is going to determine whether an offender can reside within 2,000 feet of a school or child care facility, the General Assembly must establish the criteria for the board to make their determination, responded Mr. Smith.

Mr. Smith also stated that the General Assembly should prohibit local governments from adopting their own 2,000-foot residency restrictions. He noted that the local ordinances in combination with the state law constitute banishment and will most likely be deemed unconstitutional.

**Iowa Coalition Against Sexual Assault (ICASA).** Ms. Liz Hoskins, Executive Director of Waypoint in Cedar Rapids, thanked the General Assembly for listening to the voices of crime victims last session. She commented that the 2,000-foot residency restriction is driving some sex offenders underground and it becomes harder to track their movements. She also expressed concern the residency restriction is destabilizing and disrupting the lives of offenders, which makes them more likely to reoffend. She also expressed concern about the new law punishing a parent who lives with a registered sex offender. She stated the law punishes the parent but does not punish the sex offender. Senator Dvorsky commented children are best protected when the entire community is involved and more resources should be directed to local governments and entities involved in protecting children.

**Iowa State Sheriffs and Deputies Association.** Ms. Susan Cameron, association representative, stated the association supports creating safety zones for children. She stated the association would like to further study the 2,000-foot residency restriction but has concerns about the law. Ms. Nancy Squires, Deputy, Polk County Sheriff's Department, stated the department charges a sex offender a fee to register with the sheriff and when the offender changes their address. Co-chairperson Kreiman asked whether the residency restriction has impacted local jail populations. Ms. Cameron stated there is not enough data to definitively state the jail population has been impacted, but anecdotally, jail populations have been impacted.

**Recommendations.** This was the final meeting for the Committee. The Committee did not adopt any recommendations, agreeing that many issues need further study.

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## **SEXUAL AND OTHER CRIMINAL OFFENSES, CRIMINAL PENALTIES, AND SENTENCING PRACTICES STUDY COMMITTEE**

October 26, 2005

**Co-chairperson:** Senator Keith Kreiman

**Co-chairperson:** Senator Larry McKibben

**Co-chairperson:** Representative Lance Horbach

**Overview.** The Sexual and Other Criminal Offenses, Criminal Penalties, and Sentencing Practices Study Committee is charged with reviewing sexual abuse-related criminal offenses and the Sex Offender Registry; reviewing Iowa's criminal code, and making recommendations for the code's reorganization, updating, and revision; reviewing current penalties and sentencing practices, including current mandatory minimum sentences, limitations on parole, and sentence enhancements; and conducting a comparative assessment of relative penalties based on the threat imposed by the prohibited conduct and the risk associated with particular criminal offenders.

**Changes to Sex Offender Registry.** Mr. Steve Conlon, Assistant Director of the Department of Public Safety, provided an update of the changes to the Sex Offender Registry. He stated there are currently 6,019 offenders on the registry. He noted there are 500 to 600 address changes on the registry each month. He also noted that about 20 to 40 sex offenders are being removed from the registry each month because their 10-year registration period has ended. He added that the department is updating the registry to include the capability of sending an e-mail notification to subscribers when a sex offender moves into a specified area.

**Update of Sex Offender Treatment and Supervision Task Force.** Ms. Phyllis Blood, Research Analyst, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, provided an update of the Sex Offender Treatment and Supervision Task Force. She stated the Task Force has formed five subcommittees to study the following issues: the

effectiveness of electronic monitoring; data sharing within state agencies; risk assessments of sex offenders; effective treatment options for sex offenders; and the impact of the special sentences enacted in HF 619.

**Electronic Monitoring of Sex Offenders.** Ms. Lois Osborn from the Electronic Monitoring Office of the Fifth Judicial District Department of Correctional Services summarized types of electronic monitoring utilized by the judicial districts. She noted that no sex offenders are currently being monitored using a real time electronic system. She did state there is a global positioning system (GPS) that will track a person using real time and a person could monitor the offender's movements throughout the day. She also stated that the type of electronic monitoring used to track a sex offender is determined by their risk assessment, willingness to undergo treatment, and polygraph test scores.

**Supervision of Sex Offenders.** Ms. Ellen Baker, probation and parole officer from the 2nd Judicial District, commented that HF 619 enacted during the 2005 Legislative Session and the 2,000-foot residency restriction for sex offenders have changed her job. She stated sex offenders have quit focusing on treatment and have started focusing on where they are going to live. She emphasized that her office has received numerous phone calls regarding the residency restriction which requires staff time.

**Residency Restrictions for Sex Offenders in Other States.** Mr. Joe McEniry, Legal Counsel, Legislative Services Agency Legal Services, summarized other states' laws limiting where sex offenders may reside. Alabama prohibits a sex offender from residing and seeking employment within 2,000 feet of a school or day care. Alabama also prohibits a sex offender from residing within 1,000 feet of any of their victims. Illinois prohibits a sex offender from being present on school grounds under most circumstances. Florida prohibits a sex offender from residing within 1,000 feet of a school, day care, park, playground, or any other place where children congregate. Washington permits the Department of Corrections to determine where a sex offender resides.

**Proposed Statutory Changes to Residency Restriction Statute.** Mr. Tom Ferguson, Black Hawk County Attorney, summarized proposed changes to the residency restriction statute. He stated the statute is not clear about whether it applies to all sex offenders or sex offenders who have committed crimes against a minor. He explained that the statute may not apply to schools constructed after July 1, 2002. He also noted that there are no enhanced penalties for persons who are convicted of a second or subsequent offense for living within 2,000 feet of a school or day care. He proposed the General Assembly make its intent more clear so the statute can be enforced uniformly across the state.

**Enforcement of Residency Restriction.** Ms. Jennifer Miller, Marshall County Attorney, stated nothing in the law prevents a sex offender from loitering in areas where children congregate. She proposed safe zones for children need to be created in the law. She also proposed restrictions on where a sex offender can seek employment and how close they can reside to their victims. She stated the 2,000-foot residency restriction places stress on a sex offender and a sex offender is most at risk to reoffend when the sex offender is under stress.

**Public Comment.** Mr. Dave Spencer from Rare Pearl stated the more restrictions you place on a sex offender, the more likely a sex offender will reoffend. Ms. Susan Cameron, representing the Iowa State Sheriffs and Deputies Association, stated the association supports establishing safe zones for children. Ms. Susan Fox stated her family is facing a crisis because her brother must move out of his home because it is within 2,000 feet of a school or child care facility. She noted he can only find a minimum-wage job and does not have the means to commute to Des Moines for work. Ms. Erin Wilson asked whether people who commit offenses against adults are restricted from living in certain areas.

**Next Meeting.** Wednesday, November 30, 2005, in Room 22 of the State Capitol.

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